IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24/01/2003

CORAM

THE HON'BLE MR. B. SUBHASHAN REDDY, CHIEF JUSTICE
and
THE HON'BLE MR. JUSTICE MALAI SUBRAMANIAN

W.A.No.3358 of 2002
and W.A.Nos. 3446 & 3627 of 2002 and W.P.Nos.44221, 43409, 43026, 43028, 43417, 43469, 44041, 46599, 46614 of 2002, and W.P.Nos.1560, 1390, 1391, 1012, 1013, 1678, 1401, 1402, 1403, 1404, 1405, 1806 and 1947 of 2003
and
W.A.M.P.No.5606/02 in W.A.3358/02
W.P.M.P.Nos.2108, 2109, 2110, 2111 to 2114, 2101, 2102, 2103, 2104, 2245, 2418 and 2419 of 2003

W.A.No.3358 of 2002

State of Mizoram,
Rep. by its Director,
Mizoram State Lotteries,
Government of Mizoram,
Mizoram. ..Appellant.

-Vs-

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Home (Court-II),
Fort St.George,
Chennai - 600 009.

2. The Director General of Police,
Kamarajar Salai,
Mylapore, Chennai - 4. ..Respondents.

PRAYER: Appeal against the interim order of the learned single Judge dated 11.10.2002, passed in W.P.M.P.No.56159 of 2002 in W.P.No.37384 of 2002, as stated therein.

W.P.No.44221 of 2002

M/s.Chamundeeswari Agencies,
Rep. by its Power Holder
Mr.M.Zakir Hussain,
165, Peters Road,

Chennai - 600 014. ... Petitioner.

Vs.

1. The Government of Tamil Nadu,
rep. by its Secretary to Government.
Home Department,
Fort St.George,
Chennai - 600 009.

2. The State of Tamil Nadu,
rep. by its Secretary to Government,
Finance (Raffles) Department,
Fort St.George,
Chennai - 600 009.

3. The Director General of Police,
Office of Director General of Police,
Radhakrishnan Salai,
Chennai - 600 004.

4. The Director,
Raffles Department,
LLA Building,
735, Anna Salai,
Chennai - 600 002.

5. The Commercial Tax Officer,
Chepauk Assessment Circle,
Chennai - 600 005.
..Respondents.

PRAYER: Petition filed under Article 226 of the Constitution Of India seeking for the issuance of a Writ of Declaration. Declaring Rule 20 of the Tamil Nadu Lotteries Regulation Rules, 2002, the G.O.Ms.No. 308, Finance (Raffles) Department issued by the 2nd respondent herein, etc.,as ultra vires, as stated therein.

!Mr.R.Krishnamurthy, Senior Counsel
For Mr.AR.L.Sundaresan : For Petitioners in
W.P.1560/03,
W.P.44221/02
or appellant in
W.As.3358,
3627/02

Mr.G.Masilamani, Senior Counsel
For M/s.S.Silambanan : For Petitioner in W.Ps.1390,
1403, 1404/03

Mr.G.Masilamani, Senior Counsel
For M/s.Kabilan : For Petitioner in W.Ps.1401,
1402/03
Mr.G.Masilamani, Senior Counsel
For M/s.AR.L.Sundaresan : For Petitioner in W.P.1405/03

Mr.A.L.Somayaji, Senior Counsel
For M/s.Kabilan : For Petitioner in W.P.1678/03

Mr.R.Gandhi, Senior Counsel : For Petitioners in W.Ps.1403 &
For M/s.Silambanan 1404 of 2002

Mr.V.T.Gopalan, Senior Counsel
For M/s.V.Girishkumar : For Petitioners in W.P.1806/03

Mrs.Nalini Chidambaram, Senior Counsel
For M/s.Silambanan : For Petitioners in W.Ps.1391,
1012 & 1013 of 2003 & W.A.3446
of 2002

Mrs.Nalini Chidambaram, Senior Counsel
For M/s.K.Kabilan : For Petitioners in
W.Ps.43409,
43028,43417/02
Mrs.Nalini Chidambaram, Senior Counsel

For M/s.A.Rahul : For Petitioners in W.Ps.43026,
43469, 44041/02 & W.Ps.1012,
1013/03

Mr.M.Vinayagamurthy : For Petitioners in
W.Ps.46599,
46614/02

Mr.V.Balasubramaniam : For Petitioner in
W.P.1947/03

Mr. Palani Selvaraj : For the impleading petitioner in
W.P. No.1777 of 2003

^Mr.N.R.Chandran, Advocate General
Assisted by Mr.V.Raghupathi, : For Respondents/State of
Government Pleader Tamil Nadu in all the cases.

:J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

These matters emanate from the Lotteries (Regulation) Act, 1998, which is hereinafter referred to as the Lotteries Act. The Lotteries Act is a Central piece of Legislation. The Lotteries Act confers rule making powers both on the Central Government as also the State Government under Section 11 and 12 respectively. State of Tamil Nadu framed Rules in exercise of Powers under Section 12 of the Act, titled Tamil Nadu State Lotteries (Regulation) Rules, 2002. Lotteries were being conducted not only by the State of Tamil Nadu, but by other States too. Rules 3 to 19 relate to the lotteries conducted by the State of Tamil Nadu while Rule 20 pertains to the lotteries conducted by other States, Union Territory or any country having bilateral treaty with India. Rule 20 was the subject matter of writ petitions of the year 2002, on the ground that the restrictions imposed on the conducting of lotteries other than State of Tamil Nadu were not only unreasonable, but also devoid of jurisdiction. Interim orders were passed in the said writ petitions, enabling the agents to purchase the lottery tickets organised and conducted by other states subject to the condition of payment of sales tax in advance and also not indulging in single digit lotteries. Such orders were in force as on 8th January 2003. The date 08th January 2003 assumes significance as the State of Tamil Nadu issued G.O.Ms.No.20 Home (Courts II) Department dated 08.01.2 003, prohibiting the sale of all lottery tickets, including the one organised and conducted by the State of Tamil Nadu. Writ petitions of the year 2003 are filed assailing the said Governmental Order. Interim Order was passed on 14th January 2003, permitting the sale of the lottery tickets, which were subjected to payment of advance sales tax under Section 7(D) of the Tamil Nadu General Sales Tax Act, giving a time of one week therefor. The matters have been finally heard on 22nd January 2003.

2. M/s. G. Masilamani, R.Krishnamurthy, V.T.Gopalan, A.L.Somayaji, R. Gandhi and Mrs. Nalini Chidambaram, the learned Senior Counsel advanced arguments on behalf of the petitioners / appellants, while Mr.N.R.Chandran, learned Advocate General appeared for the respondent State. Mr. Palani Selvaraj appeared for the impleading petitioner in support of the Governmental action.

3. While all other learned Senior Counsel appearing for the petitioners / appellants concentrated only on the issue of prospectivity of the Governmental action in banning the sale of all lottery tickets including that of the State of Tamil Nadu by G.O.Ms.No.20 dated 08.01.20 03, Mrs.Nalini Chidambaram, learned Senior Counsel has advanced arguments regarding the very validity of the Governmental action.

4. Mr. G. Masilamani, the learned Senior Counsel, leading the attack on the Government Order submits that once the State organised lotteries are launched and the lottery tickets have been authorised to be sold and the sale tax collected therefor by the State of Tamil Nadu, the lottery schemes announced up to 8.1.2003 have to end by drawing the lots and paying the amounts to the successful purchasers and the sudden decision of the Government

cannot annul all its actions done before the impugned Government Order. He submits that the scheme of the Lotteries Act does not permit such arbitrary action on the part of the Government. He points out that while rules have been framed by the State for conducting the lotteries, no such rules have been framed regarding the modalities to be followed in the event of imposition of ban on lotteries, but the Government cannot act arbitrarily and unreasonably while dealing with the rights of the parties, be it the sole agents, sub-agents (retailers) or the ultimate purchasers. He made an emotional depiction of the serious consequences resenting the Government's attitude in seeking to nullify the lottery tickets already authorised to be sold, which if sustained, leaves the people investing money financially wreck. He also submitted that there is no provision for refund of the compounded sales tax and for the State action to be fair and reasonable, the announced lottery schedules should be permitted to be completed in accordance with the terms and conditions stated therein. He lastly appeals to invoke the doctrines of Legitimate Expectation and Promissory Estoppel to save the grave situation. Mr. A.L. Somayaji, learned Senior Counsel made similar submissions appearing for the retailers and Mr.R.Krishnamurthy, the learned Senior Counsel appearing for the State of Mizoram has supported the above arguments. Mr. R. Gandhi, the learned Senior Counsel appearing for the petitioners in Writ Petitions 1403 and 1404 of 2003, has reiterated the above arguments laying particular stress on paragraph-16 of B.R. ENTERPRISES case (1) cited supra. Mr. V.T. Gopalan, the learned Senior Counsel appearing for the State of Maharashtra in W.P.No.1806 of 2003 submits that the lottery scheme namely 'Maha lottery' was announced on 6 th January 2003 with a draw to be made on 30.3.2003 and that the impugned Government Order cannot scuttle the lottery scheme and the sale of lottery tickets thereto and the consequent draws to be held. He further submits that once the tickets are sold while lotteries scheme are in operation and in accordance with the provisions of the Lotteries Act, the State Government has got no power to interfere in the further process, and that further process has to go on, and only the Central Government under Section 6 of the Act can intervene should it find that the lotteries are being organised in contravention of Sections 4 or 5 of the Act. Mrs. Nalini Chidambaram, the learned Senior Counsel appearing for the petitioners in W.P.Nos.1012 and 1391 of 2003 has questioned the constitutionality of the Government Order. Her contentions are three fold viz.,

(a) that the State Government never intended to ban the lotteries and that having launched a fresh lottery scheme on 7th of January 2003 inaugurated by one of the Ministers of the State Government, it is incomprehensible that the Government could think of banning the lottery the very next day, and that the action of the Government is vitiated by legal mala fides and there is no Cabinet decision to ban the lotteries, thus violating the mandate in Article 163 of the Indian Constitution;

(b) that the ban of lotteries by the impugned Government Order runs contra to the Judgment rendered by the Supreme Court in STATE OF HARYANA v. M/S. SUMAN ENTERPRISES (1994 (4) SCC 217), and the SUMAN's case being the decision by a Constitutional Bench, the contrary legal principles stated by a latter by a 2 Judge Bench in B.R.ENTERPRISES' case cannot said to be a good law;

(c) that in any event, the State Government under its delegated power under Section 5 of the Act, cannot act violating the theory of proportionality propounded by the Supreme Court in OM KUMAR AND OTHERS v. UNION OF INDIA (2001 (2) SCC 386).

5. The learned Advocate General in response to the arguments of the learned counsel for the petitioners drubs the lottery as pernicious and draws analogy to the trade in intoxicants, and emphasises the power of the Government to curb such pernicious trade and that when the State has taken a policy decision to ban the lotteries, the same cannot be tinkered with by the Courts, as, such policy decisions are only with the realm of the Government and cannot be questioned by the Courts. He further submits that there is absolutely no basis for arguments of legal mala fides and that merely because a Minister had inaugurated a State Lottery Scheme on 7th of January 2003, no estoppel can be pleaded and that there is no infraction of Article 163 of the Indian Constitution, as there is a valid Cabinet decision to ban the lotteries and only on the basis of the said Cabinet decision the impugned Government Order has been issued by the Governor. He argues that there is no bearing of Suman's case, cited supra, on these matters, and that the theory of proportionality has got no relevance relating to the business in lotteries and the moment the impugned Government Order was issued, the umbilical cord of authorisation has been snapped making the lottery business a standstill and unauthorised, and the sales tax received authorising the lottery tickets to be sold cannot have any legal sanction beyond 8th January 2003, and that to work out equities the Government is formulating a Scheme as to how best the monetary compensation can be determined and awarded. He further submits that every aspect has been addressed by the Supreme Court in B.R. ENTERPRISES v. STATE OF UTTAR PRADESH AND OTHERS (1999) 9 S.C.C. 700) and that is the law holding the field relating to lotteries, and that all the pleas made by the learned counsel for the petitioners are fit to be rejected in toto.

6. On the basis of the above contentions raised on behalf of the petitioners and the State, the following are the contentious issues, which can be concisely stated.
(1) Whether the impugned G.O.Ms.No.20 Home (Courts II) Department dated 8.1.2003 is unconstitutional and invalid;

(2) if the impugned G.O. is valid, whether the same acts only prospectively prohibiting the sale of lottery tickets from 9.1.2003 onwards and cannot affect the lottery schemes announced up to 8.1.2003 and the tickets meant and issued therefor.

(3) In any event, can the lotteries which have been purchased upto 8.1.2003 be brought within the protective umbrella of the doctrines of legitimate expectation and promissory estoppel.

7. Lotteries are not of recent origin. They are age-old but had been consistently viewed as pernicious. Yet, in order to augment revenues, some monarchial Governments as also the democratic ones have been conducting and authorising the business in lotteries. Before the advent of Constitution, the Government of India Act, 1935, provided legislative fields both for Centre as

also Provinces for enacting the law relating to lotteries and gambling. While Entry 48 of List I enabled the Central Government to enact the law relating to lotteries, Entry 34 of List II conferred legislative power on the States relating to gambling. There was no such law enacted by the Centre but States had enacted the laws. One such law was enacted by the State of Maharashtra, hitherto called Bombay Lotteries and Prize Competitions Control and Tax Act, 1948. The validity of the Act was challenged and so also the taxing provisions contained in Section 12-A thereof. The challenge to the Act was upheld by the Bombay High Court but, on appeal, the Supreme Court in STATE OF BOMBAY v. R.M.D. CHAMARBAUGWALA (AIR 1957 S.C. 699), popularly called as R.M.D.C. case, reversed the judgement of the Bombay High Court. The above judgment is of the Constitutional bench and the issue relating to the nature of trade in lotteries was comprehensively dealt with holding that lottery is a gamble and cannot be regarded as a trade or commerce in common parlance and neither there is any Fundamental Right available to a citizen under Article 19 (1) (g) nor a protection under Article 301 of the Indian Constitution. The corresponding legislative fields provided in Indian Constitution are Entry 40 of List I and Entry 34 of List II of Schedule 7. Till the year 1997, the Central Government did not make any attempts to enact any law relating to lotteries. The State Governments were either enforcing the enacted laws under Entry 34 of List II or acting on the entrustment of powers by the President in exercise of the powers under Article 258 of Indian Constitution.
8. The cases decided by the Supreme Court in H. ANRAJ v. STATE OF MAHARASHTRA (1984) 2 SCC 292), H. ANRAJ v. GOVERNMENT OF TAMIL NADU (19 86) 1 S.C.C. 414) and STATE OF HARYANA v. SUMAN ENTERPRISES (1994) 4 S.C.C. 217) arise out of the authorisation drawn by the States from Article 258 of the Constitution and enforcement of the said legal provisions.

(a) In 1st ANRAJ's case (supra), the Government of Maharashtra banned the sale of lottery tickets of other States while allowing the sale of the lottery tickets organised by it and that came to be questioned before the Supreme Court. Elaborately dealing with the Constitutional provisions contained in Article 73 vis-`-vis Article 298 as also Article 258 and the legislative field available in Entry 40 of List I of Schedule 7 of the Constitution, a 3 - Judge Bench of the Supreme Court held that a State, while organising its lottery, cannot have authority to ban the sale of lottery tickets of other States. Consequently, the State of Maharashtra was restrained from giving effect to the ban on the sale and distribution of tickets of lotteries organised by other States.

(b) The 2nd ANRAJ's case (supra) arose from the States of Tamil Nadu and West Bengal and in a different context because of levy of States' sales tax on the sale of lottery tickets. The contention was that the sale of lottery tickets is not, in essence, a sale of goods or any interest in moveable property and, at the most, it amounts to an actionable claim and that actionable claim being outside the purview of the definition of "goods", the lottery tickets were not exigible to sales tax. A further contention was raised with regard to the State of Tamil Nadu as it had exempted the sales tax on the sale of its lottery tickets while levying it on the lottery tickets of other States, on the ground of violation of equality clause enshrined in Article 14 of Indian Constitution.

Repelling the contention that sale of ticket just brings into existence a contract and does not result in the transfer of any rights from the promoter or dealer, to the purchaser, much less of rights to property, it was held by the Supreme Court that a transfer of right to participate in the draw, which takes place on the sale of a lottery ticket, would be a transfer of beneficial interest in movable property to the purchaser and therefore, amounts to transfer of goods and to that extent, it is not transfer of actionable claim. It was also held that when a purchaser purchases a lottery ticket, he pays consideration not merely for the right to claim in future a prize in the draw, but also for the right in praesenti to participate in the draw. It was clearly held that transfer of rights from the promoter (grantor) to the buyer (grantee) will clearly involve sale of the lottery ticket.

It was also held that a right of the purchaser to participate in the draw under a lottery ticket remains a valuable right till the draw takes place, and for this reason the licensed agents or wholesalers or dealers of such tickets are enabled to effect sales thereof till the draw actually takes place, and as such till then the lottery tickets constitute their stock in trade and therefore a merchandise and that the lottery tickets not as physical articles, but as slips of papers or memoranda evidencing the right to participate in the draw, must, in a sense, be regarded as the dealer's merchandise and therefore, goods, capable of being bought or sold in the market and that they can also change from hand to hand as goods. The Supreme Court was considering the matter in a limited sense as to whether the lottery was goods or actionable claim.

In so far as the discrimination in the levy of sales tax is concerned, the Supreme Court struck down the exemption granted by the State of Tamil Nadu over the sale of its lottery tickets, on the ground of violation of Article 301 read with Article 304 (a) of the Constitution and on the ground that such discriminatory treatment in the matter of levying sales tax on imported lottery tickets, which are similar to the ones issued by the State Government, hampers the free flow of trade, commerce and intercourse which the Constitution preserves in between the States in the aforesaid provisions.

(c) SUMAN ENTERPRISES' case (supra) is akin to 1st ANRAJ's case (supra). In that case, several States are involved as also the agents. Because of the importance of the matter and the decision rendered by 3 - Judge Bench in 1st ANRAJ's case (supra), presumably, the matter has been referred to the Constitution Bench consisting of 5 - Judge Bench of the Supreme Court. The order which has been passed on 21.4.19 94 is interlocutory in nature and there is no final adjudication. We are not apprised as to whether there is any final verdict in the said matters. In fact, the vital point for consideration was whether the lotteries were organised by the State or conducted by the agents authorised by the State. There is a vital distinction between the lotteries organised by the State or conducted by agents under the authority of the State. The lotteries organised by the State are the ones governed by the authority by the President in exercise of the power under Article 258 of the Constitution as, by the time the SUMAN ENTERPRISES' case (supra) was decided, there was no parliamentary enactment under Entry 40 of List I of Schedule 7 of the Constitution. The Tamil Nadu Government was a

party to the said interlocutory order in view of the ban imposed by it on the sale of the lottery tickets of other States by virtue of G.O. Ms. No.1101, dated 6.10.1989. The above order of the Supreme Court itself expressly states that there is no final pronouncement made.

In our considered view, the order passed by the Supreme Court in the above case has got no bearing in the instant case. Further, the above order of the Supreme Court in SUMAN ENTERPRISES' case (supra) was taken note of by the later Supreme Court judgment in B.R. ENTERPRISES (supra) and has been dealt with.

9. The Parliament had, for the first time, enacted the Lotteries Act, bringing it into force from 7.7.1998. But it was preceded by three Ordinances i.e. (i) Ordinance No.20 of 1997, dated 1.10.1997, (ii) Ordinance No.31 of 1997 dated 30.12.1997 and (iii) Ordinance No.6 of 1 998 dated 23.4.1998 promulgated by the President. This first law on lotteries in exercise of the legislative power under Entry 40 of List I of Schedule 7 has been in force continuously from 2.10.1997, on which date the first Ordinance came into force. G.O. Ms.No.1203 (Home Dept.), dated 24.11.1997 was issued by the State of Tamil Nadu prohibiting the sale of tickets of the lotteries organised, conducted or promoted by the other States within the State of Tamil Nadu with effect from 1.1.1998. Some other States also made such exercise. Ultimately, the matters landed in the Supreme Court and clubbing it as a batch, the Supreme Court heard the matters in B.R. ENTERPRISES' case (referred supra).

10. The validity of the Lotteries Act was challenged on the ground that the lotteries do not come within the purview of gambling and the lotteries being a trade, are governed by Articles 301 and 303 of the Indian Constitution. It was also argued that Section 5 of the Act was discriminatory in allowing the State to conduct its lotteries while banning the lotteries of other States, thus violating Article 14 of Indian Constitution. A further contention was raised that the lottery not being a gamble, is a Fundamental Right guaranteed under Article 19 (1) (g) of Indian Constitution. By Section 3 of the Lotteries Act, which reads, "save as otherwise provided in Section 4, no State Government shall organise, conduct or promote any lottery", there is a curtain drawn on the controversy as to a particular lottery, whether organised by the State or authorised by the State. As already stated above, the lottery is one organised by the State if it is traceable to a legislation enacted under Entry 40 of List I or in exercise of the executive power of the Union or the President and a lottery is an authorised one if it is one under the legislation enacted by the State tapping Entry 34 of List II of Schedule 7. Now that the Parliament has enacted the Lotteries Act, no other State can enact any law on the lotteries and all such Lotteries Acts enacted by the State Governments are non-est under the Constitution. Only the Lotteries Act will prevail all over India and all the States are bound by the provisions thereof. Every aspect of the Lotteries Act and the provisions thereof have been scrutinised by the Supreme Court in B.R. ENTERPRISES's case very comprehensively and clearly and upholding the validity of the Lotteries Act, including Sections 4 and 5, which are relevant for working of the Act and around which provisions the controversy was raised. In fact, the argument

regarding the abdication of essential legislative function under Section 5 of the Lotteries Act in delegating the subordinate legislation to the States was elaborately dealt with by the Supreme Court. Repelling the contention that such delegation of subordinate legislation amounts to abdica tion of essential legislative functions on the premise it is unguided, uncontrolled and conferring unbridled and uncanalised power, the Supreme Court held that there are sufficient guidelines in the Act itself and there are checks and balances by pointing out the defect in Section 5 of the Act, by which the Parliament authorises the States to ban the lottery tickets of other States. The Supreme Court has read down the said provision contained in Section 5 of the Lotteries Act to the effect that a State cannot ban the sale of lottery tickets of other States unless it bans the sale of the lottery tickets organised by it. By that, the Supreme Court held that the vice of discrimination is removed and the Lotteries Act is made perfect to be in consonance with the constitutional scheme. It was unequivocally held that lotteries, even though separately provided in List I with a different phraseology than that of ' gaming and gambling' in Entry 34 of List II, still the lotteries retain the same nature and character of gambling and it is not a trade within the meaning of either Article 19 (1) (g) or Articles 301 and 303 of Indian Constitution and being pernicious in nature, it is for the State to either run the lottery or to ban it but if the State runs a lottery, it shall permit the lotteries of ot her States and if the State bans its lottery activities, then it is entitled to ban the lottery activities of other States. This is the authoritative pronouncement of the Supreme Court and is the law of the land under Article 141 of Indian Constitution and the question relating to the validity of the Lotteries Act on any ground is no more res integra.

11. Under Article 163 of Indian Constitution, the Governor acts with the aid and advice of Council of Ministers headed by the Chief Minister. All executive functions of the Government of a State shall be expressly taken in the name of the Governor under Article 166 of the Constitution. The learned Advocate General has produced the file before us, from which it is clear that the Council of Ministers met on 8.1.2003 at 11.00 a.m. in the Secretariat and the meeting was presided over by the Chief Minister. While Item No.1 related to the Governor's address to the Legislative Assembly for t he year 2003, Item No.2 related to the State Lotteries. Referring to the judgment of the Supreme Court in B.R. ENTERPRISES' case dated 7.5.1999 (referred supra), it was resolved to ban all lotteries, including the lotteries run by the Government of Tamil Nadu, in exercise of the powers under Section 5 of the Lotteries Act.

12. Hence, we do not see any legal or constitutional infirmity in the decision by the State Government resulting in the issuance of the impugned Government Order.

13. Now, we proceed to the other aspect regarding the effect of the impugned G.O. on the tickets already subjected to the sales tax under Section 7-D of Tamil Nadu General Sales Tax Act. Sale of lottery tickets are exigible to sales tax and the quantum and mode of payment is prescribed under the Act and the Rules made thereunder. Unless the sales tax is paid and certificates issued in that regard, no lottery ticket can be sold. Only such

lottery tickets, which are subjected to the payment of sales tax, are entitled to be sold and only the said tickets can be pooled for draw. Rights and liabilities of sole selling agent and the Governmental authority, who is entrusted with the draws, are clearly specified under the Rules. There is no complaint that any of the Agents or sub-Agents (retailers) has violated any of the provisions of the Rules or the condition s enumerated. Sole selling agent sells the tickets to his sub-Agent (retailers) and the retailers, in turn, sell to the individuals. Once the lottery tickets are subjected to sales tax and authenticated by the concerned Commercial Tax Officer, the sole Agents or the retailers are entitled to sell the same to individuals and there is no power for any Authority either under the Lotteries Act or the Rules framed thereunder, to nullify the said tickets. The tickets are sold for the price and it is not disputed that scores of crores of rupees are involved in the business of lotteries in the State of Tamil Nadu, within which territory not only the tickets for lotteries run by the State of Tamil Nadu but of lotteries run by several other States like Nagaland, Mizoram, Arunachal Pradesh, Maharashtra, Royal Kingdom of Bhutan etc. are sold. The moment the sales tax is collected and the tickets are in the hands of the sole agents, as a necessary corollary, they are fit to be transferred to retailers and consequently, individuals, carrying an obligation to have a draw and this obligation arises under Section 4 of the Act. This is because of conferment of vested rights on the sole Agent and passed on to the retailers and the individual purchasers. It should be borne in mind that the Lotteries Act is a Central enactment flowing from List I of Schedule 7 and only the Central Government has got exclusive privilege of the same and in fact, it is an Act regulating the organising of lotteries by the States and the State is not given any right or laxity in tinkering of the provisions of the Act excepting that a State can ban its lotteries and consequently banning the lotteries of other States and barring this right, the State has got no joints to play in the Lotteries Act and the show is entirely of the Central Government. As rightly pointed out by Mr. V.T. Gopalan, learned Additional Solicitor General of India, if there is any violation of Sections 4 or 5 of the Lotteries Act, it is for the Central Government to take appropriate action and the States have got no role to play and the reason is obvious, as, the supervision and surveillance is against the States themselves. A reading of the provisions of the Lotteries Act leaves no doubt that once the lottery is organised by a State and the State, by its Regulations, has set up an Authority to authenticate the tickets upon the collection of sales tax, then the State cannot turn back and nullify the tickets under the guise of banning the sale of lottery tickets. The impugned G.O. does not set the date of commencement and rightly so because it is only prospective in operation and cannot be retrospective. The G.O. operates only from 9.1.2003 in accordance with the General Clauses Act. That apart, there is no provision in the Lotteries Act enabling the framing of a Rule or banning the sales of ticket with retrospective effect. The banning of the sale of the tickets is only prospective from 9.1.2003 and such ban on sale of tickets has to be construed as imposing a prohibition against the Government or any Authority from authenticating lottery tickets on and from 9.1.2003 onwards but the tickets already subjected to sales tax and got certification from the Authority upto 8.1.2003 are valid and cannot be hit by the impugned G.O. and such lottery tickets can validly be sold by the sole selling Agent to the retailers, who in

turn to the individual purchasers ultimately. Then, draw is a necessary corollary. When there is a law expressly made, no equity can be invoked contrary to the law and if the law is silent, the equitable principles, be it legitimate expectation or promissory estoppel, which have been evolved by the judge-made law on the touchstone of Article 14 of Indian Constitution, can be invoked. We are of the considered view that on the interpretation of the provisions of Lotteries Act, the above equitable principles are already embedded by the Parliament in the Lotteries Act as mentioned above and as such, there is no necessity for invocation of doctrines of either legitimate expectation or promissory estoppel or proportionality theory.

14. It is pertinent to mention that while upholding the Lotteries Act, the Supreme Court in B.R. ENTERPRISES' case (supra) made a distinction between a private lottery and the State lottery holding that States have been permitted to organise the lottery so as to inculcate faith in the participants of such lottery that it is being conducted fairly with no possibility of fraud or misappropriation or deceit and assure the hopeful recipient of high prizes that all is fair and safe and that the assurance is from stage one to the last with full transparency. It was also held that State lotteries for public revenues have been authorised and legalised and once this having been done, it is expected from the State to take such measures to see that people at large, faithfully and hopefully participate in large numbers for the greater yield of its revenue with no fear in their minds.

15. For the reasons mentioned supra, we hold that
(i) the impugned G.O. Ms. No.20, dated 8.1.2003 is valid;
(ii) the impugned G.O. No.20, dated 8.1.2003 has got only prospective operation from 9.1.2003 and from that date on wards, no lottery ticket, either of State of Tamil Nadu or other States, shall be authenticated or subjected to sales tax;
(iii) all such lottery tickets, either of the State of Tamil Nadu or of other States and which have suffered the sales tax under the Tamil Nadu General Sales Tax Act upto 8.1.2003, can be transferred by the sole agents to sub-agents (retailers) and they, in turn, to the individual purchasers;
(iv) the appropriate Authority/ies are directed to conduct draws of the lottery tickets mentioned in clause (iii) above;
(v) by conducting such draws as mentioned in clause (iv) above, the future dates of draws, which were already set beyond this date, shall be held on the said set dates while the dates of draws between 9.1.20 03 and this date shall be re-scheduled maintaining the same time span starting from tomorrow.

All the Writ Appeals and Writ Petitions are disposed of accordingly. No costs. Consequently, all the connected W.A.M.P.s. and W.P.M.Ps. are closed.

(B.S.R., CJ) (M.S., J)
sm/bh

Internet : Yes
LR Entry : Yes